

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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January 15, 2002

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GSBCA 15193-RELO

In the Matter of ALAN R. BROOKS

Alan R. Brooks, Rockville, MD, Claimant.

Dirk W. Richter, Personnel Management Specialist, Civilian Personnel Directorate, Europe, appearing for Department of the Army.

**WILLIAMS**, Board Judge.

An employee who declines a transfer to accept a promotion for personal preference is not entitled to relocation expenses.

Background

Claimant, Alan R. Brooks, a supply specialist with the Department of the Army, was transferred from Germany to the United States through the Department of Defense's (DOD's) priority placement program, and travel orders were issued for his relocation. However, four days before claimant's scheduled reporting date of January 3, 1999, he was notified that he received a promotion to a position located in Germany. The promotion was the result of a reclassification of claimant's position description. Claimant accepted the promotion, declined the transfer, and remained in the overseas area. His travel orders for the relocation were rescinded on January 4, 1999. Household goods and personal property shipments were diverted for redelivery to him. However, claimant's automobile was already in transit to the United States, and the agency directed its return to Germany.

On January 14, 1999, the civilian personnel office (CPO) determined that claimant was not liable for expenses of shipping his furniture, household goods, and car. The CPO also advised claimant that, since his travel orders had been revoked, he was not eligible to receive temporary quarters subsistence allowance (TQSA); he could continue to receive living quarters allowance (LQA) but not the cost of meals.

Claimant seeks reimbursement for the following expenses:

<u>Date</u>	<u>Explanation of Costs</u>	<u>Amount</u>
12-Jan-99	Telephone re-connection	\$30.94
12-Jan-99	Bath towel	\$4.00
12-Jan-99	Can opener	\$1.60
12-Jan-99	Pillow	\$9.75
21-Dec-98 - 1-Jun-99	Rental car	\$1630.18
29-Jan-99	Re-registration of weapon	\$8.00
29-Dec-98 - 11-Jan-99	TQSA meals	\$163.70
	TOTAL	\$1848.17

Claimant did not file a formal claim for reimbursement with the agency prior to submitting his request to the Board. However, according to the agency, "an informal advisory opinion was provided by the Civilian Personnel Advisory Center (CPAC) in Bamberg, Germany, with a request that Mr. Brooks submit his claim in writing to Headquarters, U.S. Army Europe (USAREUR), Civilian Personnel Directorate (CPD) for review and official determination." Claimant states that he attempted to file a claim with the agency, explaining: "Actually, I spoke with an Army CPAC representative on . . . several occasions, and she advised me that the Army could not reimburse me for any costs resulting from the cancellation of my travel orders. In fact, [she] faxed to me the procedures for filing a claim through the General Services Administration Board of Contract Appeals. The Army had every possibility to advise me to file a claim through [its] office."

### Discussion

#### Jurisdiction

Ordinarily, under Rule 401, we would dismiss for lack of jurisdiction a travel or relocation claim filed with the Board that had not first been presented to the agency. Leon Rodgers, Jr., GSBICA 14678-TRAV, 99-1 BCA ¶ 30,376, at 150,156; Steve Resch, GSBICA 14526-RELO (Mar. 26, 1998). However, in the absence of a statute requiring exhaustion of remedies, application of a rule like this one is a matter of judicial discretion. Rodgers; Communications Workers of America v. American Telephone & Telegraph Co., 40 F.3d 426, 432 (D.C. Cir. 1994). Further, where a litigant can demonstrate that resort to administrative remedies would be futile because of the certainty of an adverse decision, exhaustion of administrative remedies will be excused. Id.; see Fallick v. Nationwide Mutual Insurance Co., 162 F.3d 410, 419 (6th Cir. 1998). As we recognized in Leon Rodgers, it is appropriate to apply this doctrine to Board Rule 401. Here, it is apparent that if claimant were to file a formal claim with the agency, it would be denied on the same ground articulated by the agency to claimant and in its correspondence to the Board. Rodgers, 99-1 BCA at 150,156.

#### Relocation Expenses

The law is clear that when an agency orders an employee to change permanent duty stations in the interest of the Government, and the employee then incurs relocation expenses of a kind for which reimbursement is authorized, the employee should be reimbursed for those expenses. Joint Travel Regulations (JTR) C4102; Michael D. Addington,

GSBCA 14092-RELO, 97-2 BCA ¶ 29,152. Even if the orders are later rescinded, due to circumstances beyond an employee's control, expenses which were incurred while they were in effect are reimbursable so long as the employee incurred the expenses in good faith and in anticipation of the transfer before the transfer was canceled. JTR C3054; Michael J. Halpin, GSBCA 14509-RELO, 98-1 BCA ¶ 29,730; Addington, 97-2 BCA at 144,990; Orville H. Myers, 57 Comp. Gen. 447 (1978); cf. Maryann Zekunde, GSBCA 15317-RELO, 00-2 BCA ¶ 31,008 (no reimbursement when a transfer is canceled for personal reasons -- because claimant accepted a job in the local area); John F. Pattie, B-197609 (Oct. 20, 1980) (no reimbursement where travel orders were not canceled for official reasons, but for employee's personal preference). If the employee's duty station did not change as a result of the canceled transfer, then reimbursement is allowed as if the transfer had been completed and the employee had been retransferred to his former duty station. William B. Storch, B-226282 (July 20, 1987); Orville H. Myers.

The agency contends that claimant's decision to remain in Germany, accept a promotion there, and decline a transfer was a matter of his personal preference and not due to "circumstances beyond the employee's control" or for official reasons. The Comptroller General, our predecessor tribunal for resolving relocation claims, has recognized that the determination as to whether an employee's declination of a transfer was for a reason beyond his control is primarily a matter for the agency and will not be disturbed unless it is clearly erroneous, arbitrary, or capricious. Murell C. Hoage, 63 Comp. Gen. 187 (1984); see also Bart J. Dubinsky, GSBCA 14546-RELO, 98-2 BCA ¶ 29,840 (authority to determine whether transfer is in the interest of the Government rests primarily with the agency and agency determination will not be overturned unless arbitrary, capricious, or clearly erroneous). Here, the agency did not require or request that claimant accept the promotion rather than transfer. Nor did the agency commit any error when it initially transferred claimant. Cf. Jeffrey Meyer, GSBCA 14138-RELO, 98-1 BCA ¶ 29,597 (reimbursement allowed where transfer cancelled because agency selected nonqualified employee for position). As such, claimant has not demonstrated that the agency erred or acted arbitrarily in determining that his election to stay in Germany and accept a promotion was his personal choice and not due to circumstances beyond his control.

In Maryann Zekunde, 00-2 BCA at 153,179, we held that an employee could not be reimbursed for real estate expenses incurred in selling her home pursuant to orders transferring her and authorizing such reimbursement -- even where the agency had encouraged employees to seek employment locally and claimant had secured a local job. The Board reasoned: "[claimant's] transfer was not canceled by the Government. She decided, for personal reasons, to accept a job in her local area rather than transfer with her unit. The fact that [claimant's] personal decision may also have benefitted the Government does not change its essential character." Id. Similarly, in this case, claimant's decision to remain in Germany was his own -- his transfer was not canceled at the behest of the Government and he is not entitled to the reimbursement he seeks.

We note in passing that claimant could not have recovered for the rental car even if his transfer had been canceled by the Government. There is no authority for reimbursement for a rental car while awaiting a privately owned vehicle's arrival. JTR C11000 note; Donny Flores, GSBCA 15072-RELO, 00-1 BCA ¶ 30,648; Jacqueline Williams, GSBCA 15026-RELO, 99-2 BCA ¶ 30,538; Thomas S. Ward, GSBCA 13825-RELO,

97-1 BCA ¶ 28,955; cf. Andrew Parr, GSBCA 14058-RELO, 98-1 BCA ¶ 29,426 (reimbursement for rental car prohibited during temporary quarters subsistence expenses period); John G. Shirley, B-234861 (July 11, 1989) (reimbursement for rental car disallowed when employee transferred from South Carolina to Hawaii and rented car while awaiting the arrival of his privately owned vehicle, even though his relocation authorization permitted use of a rental vehicle).

Decision

The claim is denied.

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MARY ELLEN COSTER WILLIAMS  
Board Judge